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No. 80-1070

SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONNA RIDGWAY and
THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY,
AND BRADY L. RIDGWAY
BY THEIR MOTHER AND NEXT FRIEND,
APRIL D. RIDGWAY
Respondents

ON WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF MAINE

PETITIONERS' REPLY AND SUPPLEMENTAL BRIEF

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September 24, 1981

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Note: The Court's attention is directed to the statement of subsidiaries (except wholly-owned subsidiaries) of The Prudential Insurance Company of America which was filed with the Court on July 13, 1981, and which remains unchanged.

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This Reply and Supplemental brief has three purposes: to address certain points raised in the Respondent's brief, to consider this Court's decision in *McCarty v. McCarty*, _____ U. S. _____, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981), decided after Petitioners' brief was filed, and to report still further new filings of cases similar to this action.

I. REPLY TO SELECTED POINTS IN RESPONDENT'S BRIEF

A. Fraudulent Use of Community Property

The Respondent's brief cites the cases of *Free v. Bland*, 369 U.S. 663 (1964), and *Yiatchos v. Yiatchos*, 376 U.S. 306 (1964), as support for an allegation of constructive fraud against the late Sergeant Ridgway. Respondent's brief, p. 17. His conduct in naming an SGLI beneficiary other than those ordered by the Court is analogized to the fraudulent act of Mr. Yiatchos in willing the entire interest in U.S. Savings Bonds to his brother, thus ignoring his widow's community property interest in them under Washington state law.

This argument misconceives a fundamental distinction between the SGLI insurance rights asserted in this action and the community property concepts at issue in *Yiatchos, Free v. Bland,* and *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979). Federal law and regulations create an absolute right in the insured serviceman to control his SGLI beneficiary, which is personal to him alone. It is, in the words this Court recently used to describe military retirement pay, a "personal entitlement," not a shared asset subject to the interest of another under community property concepts. *McCarty v. McCarty*, _____ U.S. _____ (1981). The miscreant Mr. Yiatchos intentionally misdirected property in which his wife had a vested interest. No one other than Richard Ridgway had the power to create interests in his SGLI insurance, and any interests so created were extant only until his next subsequent valid beneficiary designation was properly received by the military. While Richard or his estate might be subject to a civil claim for misdirecting the proceeds, he could not be said to have committed fraud based on the community property theories advanced in April's brief.

B. Spendthrift Exemptions

April argues that she is not a "creditor" within the meaning of 38 U.S.C. § 770(g) and her remedies are thus not blocked by the exemptions provided by that section. Respondent's brief, pp. 19-24. Petitioners wish to re-emphasize the point made in their principal brief, but evidently missed by the Respondent: it makes no difference under § 770(g) whether April is technically a "creditor" or not. The statute bars all legal action against all parties.

While no reported cases have been decided solely on the basis of 38 U.S.C. § 770(g), Petitioners had earlier asserted that cases decided under the NSLI analogue (38 U.S.C. § 3101(a)) uniformly held that § 3101(a) would bar a claim for policy proceeds which was contrary to the serviceman's intent, even when such a claim was based on an alimony or support decree. See Petitioners' brief pp. 13, 29. A substantial body of authority drawn from decisions of federal courts of appeal and state courts of final jurisdiction was cited. The Respondent's brief makes a bald assertion to the contrary, claiming that the predecessor to § 770(g) had been interpreted "a number of times in the context of attempts to enforce the claims of dependents for support out of veterans' benefits." Respondent's brief, p. 19.

Only an old decision of a lower state court has been cited supporting Respondent's position on this point. *Gaskins v. Security-First Nat. Bank*, 30 Cal. App. 2d 409, 86 P. 2d 681 (Dist. Ct. of App. 1939). The argument is otherwise devoid of citations to cases involving military life insurance. Further, it is simply not true that by 1970 "judicial construction of the existing analogues of 38 U.S.C. § 770(g) had crystallized an exception for financial obligations arising out of the family relationship," as alleged on page 21 of Respondent's brief. Petitioners' brief amply substantiates the opposite. Petitioners' brief, pp. 13, 19, 20, 26.

C. The "By Law" Beneficiary Designation

The Respondent's brief suggests, in both the text and footnote on page 12, that Richard Ridgway's "by law" beneficiary designation was equivalent to abandonment of his right to elect his beneficiary, and to acceptance of the order of beneficiary precedence prescribed by statute. The argument is advanced that this

form of designation is somehow unclear, although admittedly legal. The footnote further speculates that Sergeant Ridgway may have believed others would receive the insurance proceeds. *Id.*, n.2.

Both suggestions are fanciful and unsupported by logic or anything in the record. Contrary to April's assertion that the "by law" designation constituted an uninformed default of Sergeant Ridgway's statutory right of choice, the beneficiary designation form requires reference to its second page for a listing of the order of payment precedence which a "by law" designation will create. R., Donna's Trial Exhibit 2. An affirmative, conscious act by the electing serviceman is thus necessary to effect such a designation. It is simply illogical to suggest that anyone would deliberately ignore the cross reference to the second page and enter "by law," while remaining intentionally ignorant of the significance of the words. The order of precedence is clearly stated on the second page and it is equally certain that no one who read it could believe that his children would receive the money if the serviceman were married when the designation became operative.

D. Unjust Enrichment

Respondent alleges that Donna "would obviously be unjustly enriched if she received the proceeds of her husband's insurance policy." Respondent's brief, p. 7. April argues that Petitioners have never denied that Donna would be unjustly enriched (*id.*, p.5), and somewhat wishfully suggests that Petitioners have apparently conceded the issue. *Id.*, p. 24.

Such statements are totally without basis. Throughout the course of this litigation, both in this Court and the courts below, Donna and Prudential have both asserted Donna's absolute right to the proceeds of Sergeant Ridgway's SGLI policy, without encumbrance. *E.g.*, Petitioners' brief, pp. 27, 33. Donna was Richard Ridgway's wife when he died. He had specifically made a conscious decision to designate her as his SGLI beneficiary during their marriage. She has done nothing wrong. She has properly completed the necessary claim for benefits (R., Donna's Trial Exhibit 3), and is entitled to an unrestricted award of the insurance proceeds. She will in no way be unjustly enriched by receipt of the policy benefits.

E. Statutory Language Changes

Petitioners had advanced the position that the serviceman's right to make totally unrestrained beneficiary designations was more vigorously protected, if possible, under the SGLI program than under the predecessor NSLI statute. Petitioners' brief, p. 10. April urges that because two phrases which appeared in 38 U.S.C. § 717(a) are not present in the current § 770(a), Congress is currently less supportive of servicemen's freedom of designation than had been the case under the previous statute. Respondent's brief, n.3.

In fact, several phrases which had appeared in the earlier statute have been incorporated into comprehensive regulations under the SGLIA which were non-existent under the NSLIA. See generally Petitioners' brief, pp. 36-40. Taken in conjunction with the SGLI statute, the protection afforded the serviceman's right of beneficiary designation under the present law is even more detailed and complete than under NSLI.

F. The Stipulation Regarding Property Settlement Negotiations

In footnote 1 to April's brief Petitioners are taken to task for not referring in their brief to a stipulation in the trial court regarding prior property settlement negotiations. (A. 33). The omission was intentional, due to the uncertain status of the stipulation in the case, although Prudential and Donna believe that it is not material to the result here whether the matter stated in the stipulation was admitted into evidence or not.[1]

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[1]Although agreeing to the truth of the facts stated, Prudential and Donna reserved the right to object to introduction of the stipulation into evidence. At trial, the stipulation was received by the court *de bene*, without a ruling on its admissibility. The superior court's written Decision and Order perpetuated its tentative trial position by stating that it was "stipulated (unless barred by the parol evidence rule) that prior to the divorce, extensive negotiations regarding a property settlement were carried on." (A. 38). Nowhere did the court's Decision and Order decide the issue on which judgment was thus reserved.

In the course of April's appeal to the Maine supreme court a further stipulation was entered into by all parties that the superior court's findings of fact were correct and unchallenged. (A. 48). Since the admissibility of those facts contained in the first stipulation had not specifically been ruled upon by the superior court, presumably this matter did not come within the scope of the later stipulation, as the content of the first stipulation had not been "found" as a fact.

G. Policy Considerations

In the Petitioners' brief Prudential and Donna argued that very substantial administrative problems and costs would ensue if the group insurance carrier were forced to investigate each benefit claim to determine whether the insured serviceman was subject to any kind of court order directing payment to one other than the beneficiary designated to receive his SGLI benefits. April dismisses these contentions lightly, suggesting that few cases similar to Ridgway will arise, and that any time a competing claim for benefits results in litigation naming the insurance carrier, it can simply interplead the claimants and pay the proceeds into court.

This casual response misconceives the scope and gravity of the problem. The Petitioners' main brief identified several similar pending lawsuits in both state and federal courts, all of which had arisen during the time that this action has been in litigation. Since that principal brief was filed on May 23, 1981, additional controversies have arisen. See Part III of this brief, *post*. The potential for a large volume of such litigation is substantial, with attendant expenses in each such case a certainty.

Perhaps even more important is the damage which would be done to the credibility of the SGLI program as an inducement to military service, and to the good will of both the military and the insurer if the statutory and regulatory language is not to be given the obvious meaning of the words. The certainty of litigation if the insurer intentionally pays or states its intention to pay the designated beneficiary rather than the divorce-based claimant has been discussed in the Petitioners' brief at pp. 28 and 30-32. Should the insurer pay the designated beneficiary before becoming aware of a competing claim, a suit to recover the funds from the designee would follow with equal certainty, if the result decreed by the Maine court were to become the law. Whether the insurer were named as a defendant in such actions or not, continuing doubt over the reliability of beneficiary designations and payments

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Although the point was thus apparently unresolved, the state supreme court stated the negotiation stipulation as an admitted fact in the second paragraph of its decision. (A. 51). Because they were uncertain of its status, the Petitioners chose not to refer to the stipulation in the Statement of Facts in their principal brief in this Court. They continue to believe that the stipulation was never admitted into evidence.

would impair the credibility of both the insurer and the military, ultimately weakening the integrity and value of the entire SGLI program.

April further asserts that a ruling from this Court confirming the designated beneficiary's absolute right to the insurance proceeds would create uncertainty because divorce counsel would be unaware of the state of the law. Such an argument collapses upon itself. This Court's clear order, upholding not only the correctness of the insurer's action in paying the properly designated beneficiary but the beneficiary's absolute right to retain the proceeds, would provide a certain rule for all divorce counsel in the country. It would be up to counsel to recognize that SGLI insurance proceeds are, *a priori*, not to be considered as a component of divorce litigation or negotiation.

II. MCCARTY V. MCCARTY

On June 26, 1981, about a month after the Petitioner's brief was filed, this Court decided *McCarty v. McCarty*, _____ U. S. _____ (1981). In that case the Court reversed a decision of the Court of Appeal of California for the First Appellate District, and held that California's community property law did conflict in a material way with "clear and substantial federal interests" in federal military employee benefits. *Id.*, at _____. It thus rejected the claim of the divorcing wife of a military physician that she was entitled to an equal community property interest in her spouse's military retirement pension.

The Court's analysis of the parties' competing claims in *McCarty* is undertaken totally in the context of community property law, and the result is not surprising in view of *Wissner v. Wissner*, 338 U.S. 655 (1950), and *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979). Nonetheless, the opinion contains a number of holdings and observations which are highly relevant to this action.

First, while recognizing that its decision to deny the wife's claim might well cause hardship to ex-spouses of military personnel, this Court emphasized the unique and preferred status to be accorded military benefits established by Congress. In referring to the draft registration case, *Rostker v. Goldberg*, _____ U. S. _____ (1981), decided the same week, the Court pointedly stated, "We very recently have re-emphasized that in *no area* has the

Court accorded Congress greater deference than in the conduct and control of military affairs." *Id.*, at _____. (emphasis supplied).

The *McCarty* Court also restated a theme originally expressed in *Wissner*, noting that retirement pay "is one of the inducements selected to make military service attractive." *Id.*, at _____. *See also Wissner*, 338 U.S. at 661. The Court in *McCarty* went on to find that the state community property law constituted a direct interference with federal military power. The Court's statement with respect to retirement pay as an inducement to military service applies with equal force to military life insurance, and suggests most strongly that Congress' clearly worded protection for SGLI beneficiaries and proceeds (38 U.S.C. §770(g)) must be honored.

A second relevant feature of the *McCarty* case is its application of the federal pre-emption test enunciated in *Hisquierdo* to the realm of federal military programs. Citing *Hisquierdo*, the Court observed in *McCarty* that in the area of domestic relations, "[s]tate family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden." *Id.*, at _____, *citing Hisquierdo*, 439 U.S. at 581, with further citations noted therein.

The dissent in *McCarty* took issue with the Court for not quoting the exact language of the *Hisquierdo* pre-emption test, which it stated to comprise "a determination whether Congress has 'positively required by direct enactment' that state law be pre-empted." *Hisquierdo*, 439 U.S. at 581, *citing Wetmore v. Markoe*, 196 U. S. 68 (1904).

Although differing slightly on phraseology, the majority and dissenting opinions in *McCarty* are in essential agreement on the pre-emption standard to be applied. They parted company, however, over the question of whether the state-based community property rights asserted by Mrs. McCarty had been negated by affirmative, directly enacted federal law. It is extremely interesting to note that in presenting a model illustration of a federal statute which meets the tests of a directly enacted positive federal law to which state action does major damage, both opinions cited the beneficiary designation provisions of the National Service Life Insurance Act involved in *Wissner v. Wissner, supra*, _____ U. S. at _____, _____. Thus, *McCarty* emphas-

izes that the general rule of federal pre-emption is exemplified by the beneficiary designation provisions of NSLIA, which state Congress' intent with "force and clarity." Of course, those statutory sections are virtually identical to the ones at issue here.

Another characteristic of the *McCarty* decision directly germane to the issues here is the concept of certain military benefits as "personal entitlements" to the insured serviceman, not subject to the claims of any other interests. The Court took an expansive view of the term "personal entitlement," citing the NSLIA as an analagous statutory scheme standing for the strictly individual rights of the insured serviceman in his policy, and thus his absolute right to control its proceeds. _____ U.S. at _____. This right has been sufficiently contrasted with community property interests in an earlier section of this brief. *ante*, p. 1.

III. NEW CASES PRESENTING SIMILAR ISSUES

In the period since Petitioners' brief was filed, two new cases have come to Prudential's attention which present SGLI issues similar to those in this litigation. These cases are in addition to those previously identified in Petitioners' brief.

In the first of these, the widow of a deceased serviceman claims the proceeds of the insured's SGLI policy with respect to which the "by law" form of beneficiary designation was employed. A claim has also been filed on behalf of the minor child of the serviceman's prior marriage, premised on a divorce judgment which had ordered the decedent to maintain the minor child as sole beneficiary of any life insurance policies he might have in connection with his employment. At the time of the divorce judgment the decedent was not in the military and was covered by a private life insurance policy at his place of employment. He subsequently entered the military and obtained SGLI coverage.

Procedural matters have delayed commencement of suit, which has not been filed as of this date. Its filing in the U. S. District Court for the Eastern District of Michigan, Southern Division, is imminent.

In *McPherson et al. v. Bowles et al.*, now pending in the Circuit Court of the State of Oregon for the County of Multnomah under Docket No. A18103-01578, the serviceman's widow is a "by law" beneficiary. His ex-wife has sued the widow and Prudential on behalf of the serviceman's children, claiming that the policy pro-

ceeds should be awarded to her and the children in satisfaction of the decedent's alleged support arrearage obligation to the plaintiff's children. In that action, the claim is a general one against the policy as an available asset of the decedent, since the divorce judgment had not required that the SGLI policy be maintained with the children as beneficiaries.

These new cases illustrate additional factual variations on which claims to SGLI proceeds are continuously being litigated in the current unsettled state of the law.

IV. CONCLUSION

Petitioners renew their prayer that the decision of the Maine Supreme Judicial Court be reversed, and that this Court's order issue directing payment of the policy proceeds to Donna Ridgway. Petitioners urge that such payment be final and not subject to a constructive trust or any other encumbrance.

Respectfully submitted,

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